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TUESDAY EVENING, JANUARY 28, 1879.

Judge Hughes read a written decision on the points raised by the instructions prayed for by counsel in the Arlington case on the opening of the U. S. Circuit Court here this morning. The judge decided to grant the instructions asked for by the plaintiff, and to refuse the instruction on the same points of law prayed for by the defendants. He holds that the Supreme Court had in two contested cases settled the principle that an owner of land subjected to direct taxation by Congress, by the act of 1862-3, had a right to pay the tax at any time before a tax sale, through a friend or agent as well as in person, and that a tender of payment, or a practice of the commissioners refusing payment of the tax by a friend or agent prevented forfeiture and invalidated a tax sale made after such tender, or after the adoption of such a practice. The Judge considered, with some elaboration, the distinction sought to be set up by defendants' counsel, between such a sale made to a private purchaser and one made to the United States, and held that although the Supreme Court had not passed upon any case of a sale made to the United States under the circumstances described, yet, that there was no principle of law and no provision in the acts of 1862-3, that would justify such a distinction, or give the United States a valid title if a purchaser under a sale which would be void if made to a private purchaser. He, therefore, refused the instruction asked for by defendants. The ruling of the Court on these instructions settles the law of the trial in favor of the plaintiff, Gen. Lee, and it is only left now for the jury to find the facts.

The Potter Investigation Committee in "sloshing around" generally yesterday, trying to get at the cipher dispatches, stumbled upon evidence that ex-Secretaries Tyner and Zach Chandler, were in the habit of selling offices, at rather high figures too, for the purpose of raising funds to defray "election expenses" in Ohio and Indiana, in October, prior to the last Presidential election. Mr. Grant, a Supervisor of Election telegrams, testified that one was a telegram "from Tyner about making two appointments in the Interior Department, at salaries of $2,500 each and asking Mr. Chandler to do this and have the money deposited in some National bank, so that it might be drawn in Indianapolis by the Republican Committee." The telegrams also contained the names of the persons to be appointed. Witness further testified that Chandler telegraphed that he had deposited the money (which witness understood was paid to Chandler for the positions in the department), as requested.

First Assistant Postmaster General Tyner says his telegrams to Chandler are misconstrued. "When he went to Indiana in the fall of 1876 he had an arrangement with Chandler by which the latter was to deposit $5,000 or $10,000 to aid the Republicans of the State named and that he was to deposit the money in case Tyner telegraphed him it was needed. They both agreed that money was not to be named in these telegrams, but that if Tyner deemed it necessary he should telegraph, asking Chandler to appoint an Indian agent and deposit in the Hanover National bank of New York. He did telegraph C. to appoint two Indian agents, each, it being understood, representing $5,000, Chandler understood it and made the deposit." The telegrams were withdrawn from the telegraph company before Congress asked for them at the request of Mr. Tyner, as he feared misconstruction.

In the slang, but expressive phrase of the day, the explanation is "too thin."

When the Senate went into executive session yesterday the Committee on Commerce submitted an adverse report in the cases of the New York Custom House officials, Merritt and Burt. The replies of ex Collector Arthur and ex-Surveyor Cornell to the letter of Secretary Sherman, and a mass of accompanying documents, were read, and when they were concluded a note from Mr. Sherman was read asking that copies of the letters be furnished him. A proposition was then made that the injunction of secrecy, as far as the letters are concerned, be removed, and that they be printed and copies furnished Mr. Hayes Mr. Sherman and the members of the Senate. This motion was agreed to almost unanimously. Senator Thurman then moved that all future proceedings on these nominations in question be had with open doors, but pending discussion the Senate adjourned. A caucus of the democratic Senators was to have been held this morning, at which it was expected a line of action to be pursued in the matter would be agreed upon. Mr. Conkling made no effort to have the Senate consider the nominations yesterday, being aware that under the rules one objection was sufficient to carry them over until the next executive session.

The Teller committee in Charleston yesterday got some evidence the majority of them did not want, and that will tend in no small degree to throw doubt on the bull dozing evidence of Mr. Mackey—that is of course with those who rely upon evidence and not blind sectional prejudice for their opinions. It was that of a printer, who swore positively and unequivocally that he had printed no less than ten thousand republican tissue tickets, or "little jokers," for the identical Mr. Mackey, who is swearing that such tickets with only this difference, that democratic were substituted for republican names, were the means that defeated him for Congress at the last election.

The Charlestown, W. Va., Spirit of Jefferson says: "One of the best newspapers in Virginia, and one of which the citizens of the old State may justly be proud, is the Alexandria Gazette, which has entered upon the 80th year of its existence."

It was stated in our Washington correspondence, yesterday, that some of the democratic members of Congress were contemplating the introduction of a bill to re-impose the income tax. At the congressional democratic caucus, held last night, such a proposition was made by Mr. Mills, of Texas, and was referred to a joint committee of three democrats of the Senate and three of the House, to report next Monday evening. We trust it may be adopted and that the democrats in Congress may press it to its passage. It will, at least, be a move in the right direction, and any advance that way must be beneficial. The whole system of collecting the revenue for the government now in vogue is wrong, inasmuch as it taxes the necessaries of life, but exempts that for the protection of which the expense of government is mainly borne—the rich man's property. Such a system is and must be not only unjust but oppressive, and should therefore be abolished, and the government be supported by direct taxation upon property, real and personal, in the several States. The only plausible objection that could be urged, in the South, against such a system, would be the decrease it would occasion in the representation in Congress and in the electoral college from that section, but the experience of such representation since the war is not calculated to make the oppressed people willing to bear their burdens indefinitely for the mere purpose of electing a dozen more Congressmen and presidential electors than they are really justly entitled to. However, as such a beneficent change can not be hoped for from the present improperly called democratic House, and even if made by the House would be defeated by the moneyed oligarchy which controls the Senate, the next best measure to be attempted is the imposition of an income tax, and we hope the efforts to secure its accomplishment will not be abandoned. One objection that interested parties make to it is that it invades a man's privacy and exposes what is obtained there to the public, but as this objection can also be urged to the present method of assessment, and to the mode by which the census is taken, it doesn't hold good. How could a man's privacy be intruded upon more grossly, and his private affairs be made more public, than is done every year when the commissioner of the revenue enters the tax payer's house and lists its contents, even to the number of the spoons and forks, for public exhibition? Making a man swear to the amount of his income is certainly less inquisitively trespassing than this, and as the objection is not effective against the continuance of the greater injury, it should not be against the infliction of the lesser.

NEWS OF THE DAY.

The Windsor Hotel, New York, is to be sold under foreclosure of mortgage February 5.

The Needham, Mass., Savings Bank will close for lack of business. The bank is perfectly solvent.

Since the beginning of the present Congress over six thousand bills have been introduced in the House alone.

Hon. John B. Dillon died at Indianapolis, yesterday. He was librarian at Washington for ten years, and State librarian for Indiana for several years.

The First National Bank of Grantsville, Ohio, has suspended. The depositors will be paid in full. Holders of the bank's papers will be losers.

The contractors of Norfolk's new city alms house, a three story building, 101 by 42 feet, and costing $8,089, turned it over ready for occupancy Friday.

Mrs. W. C. C. Foster, a widow, residing alone near Memphis, Tenn., was brutally murdered Sunday night by some unknown persons, who crushed her skull with a hammer.

In the Senate yesterday the bill to pay Warren Mitchell $128,000 for cotton belonging to him, captured during the war by the United States, was strongly opposed by Mr. Hill, of Georgia, who said he was opposed to all war claims.

Marshall S. Pritchard, town collector of Cherry Valley, Ill., was mysteriously murdered at Rockford, Ill., Sunday. His body was found with a ball in the head and a deep gash in the temple. His pockets had been rifled. Several parties are under suspicion.

A majority of the Judiciary Committee of the Tennessee House of Delegates has reported against the passage of the bill for the repeal of the charter of the city of Memphis, Tenn., a measure which is being urged by leading citizens of that city.

The New York Tribune says it has information derived from the most direct sources which warrants it in stating in the most positive terms that the body of the late A. T. Stewart has not been recovered by Mrs. Stewart or Judge Hilton, or any of their agents.

The fire in the Williamstown, Pa., colliery was yesterday under control, and in the course of another day will be extinguished. The damage is confined to the burning of the engines and drum at the top of the slop and the suffocation of twenty mules by the smoke. Loss $30,000.

Rev. Joseph Max Michaelbacher, one of the oldest Jewish rabbis in this State, died in Richmond yesterday, in the 69th year of his age. Mr. Michaelbacher came to this country from Bavaria in 1844, and except a residence of two years in Philadelphia had lived in Richmond up to the time of his death.

At Montville, Me., on Saturday Jno. McFarland, a farmer, his wife and granddaughter, were murdered by one Rowell, an insane man. Mrs. McFarland was shot with a gun, and the others had their brains beaten out. The murderer was afterwards shot and killed by a neighbor whom he attacked.

The will of Caleb Cushing, which has been presented in the Probate Court at Newburyport, Mass., gives no statement of property, and makes no public bequests. The property is to be divided into two equal parts, one of which is to go to the five children of John N. Cushing and the other to the three children of the late William Cushing. John N. Cushing is the executor.

In the House of Representatives yesterday the bill of Mr. Wright, of Pennsylvania, for the loan of $500 by the Government to any person desiring to take advantage of the provisions of the homestead act, was defeated by a vote of 22 to 212. Mr. Whitthorne moved to suspend the rules and pass a bill appropriating in the aggregate $1,065,000 for court houses and post-offices in various sections of the country, including $75,000 for a court house at Lynchburg, Va., but without action on the bill the House adjourned.

A bill was introduced in the Senate yesterday by Mr. Ferry which provides that all able bodied male citizens between the age of 18 and 45 years resident within the respective States and Territories, except such as may be exempt by law, shall constitute the militia. The militia are to be divided into two classes—the active to be known as the National or State guards, as the Legislature of each State may prescribe, and the inactive, to be known as the reserve militia. The bill proposes to appropriate one million dollars for the purpose of providing arms, ammunition and other ordiance and quartermaster stores for the active militia.

THE ARLINGTON CASE.

[Reported for the Alexandria Gazette.]

The consideration of the Arlington case was resumed in the U. S. Circuit Court, Judge Hughes, presiding, this morning.

The judge having announced yesterday that he would render a decision on the instructions this morning there was a very large attendance within and without the bar.

The jury was called immediately upon the opening of the Court.

The Court then delivered his opinion on the plaintiff's instructions and the first of the defendants'.

The decision is as follows:—

United States Circuit Court, Eastern District of Virginia.

G. W. C. Lee vs. Kauffman et al. } In Ejectment.

The two instructions asked for by the plaintiff, and the instruction No. 1 asked for by the defendants, depend upon the same principles of law, and may be considered together. I think these instructions embrace the principles of law which control the case under trial, and it would seem to be hardly necessary to give much special consideration to the other instructions offered.

I will premise that the certificate of the sale of Arlington made by the tax commissioners, which can be impeached only by showing either: 1st, that the property was not subject to the tax for which it was sold; or 2d, that it was after the sale redeemed from the tax according to the provisions of the law of 1862; or 3d that the tax had been paid before the tax sale; is impeached by the plaintiff in this suite only on the last of these grounds. The sale is conceded to have been valid in other respects.

This objection to the sale is made by the plaintiff not on the claim that the tax was in fact paid, but on the claim that he (or his predecessor in title) did all that he was bound to do by law towards paying it; that the non receipt of it by the government was not through fault of his, but through fault of its own officers; and that, having himself done what was the equivalent of paying the tax, the land was not forfeited by law, and the commissioners' sale of the property for the tax was therefore unauthorized, null and void.

The instructions under consideration all relate to the question whether the acts of the plaintiff [or of his predecessor] in regard to the payment of the tax were in law the equivalent of payment to the extent of preventing a forfeiture. The plaintiff's claim is, that through a friend or agent he went to the tax commissioners, at their office, during the period when the tax was receivable by law, with money in hand for the purpose, and proposed to pay the tax, but was prevented from doing so or from tendering payment by being informed by such one or more of the commissioners as were then in their office, that the tax would not be received except from the owner of the land in person. He claims, moreover, that this rule of the commissioners, this construction which they put upon the law of 1862 and 1863, was so generally known and announced as to amount to a waiver of tender on their part, and that he was thereby exonerated from the useless task and nugatory formality of making tender or offer of payment through an agent or friend [through whom he had a right to act in the matter,] and was thereby relieved in law from default, and his land from forfeiture for the tax.

The single question raised by the three instructions under consideration is therefore whether the tax imposed upon this estate by the law of June 7, 1862, "for the collection of direct taxes in insurrectionary districts," as amended by the act of February 6, 1863, could be paid except by the owner in person.

The clauses of the act of 1862, as amended, under which the sale of Arlington was made, are substantially in the following words:

Section *three* provides, "That it shall be lawful for the owners of land, within sixty days after the tax commissioners shall have fixed the amount, to pay the tax thus charged into the treasury of the United States or to the tax commissioners, and take a certificate thereof, by virtue whereof the land shall be discharged from the tax."

Section *four* declares the land forfeited on the non payment of the tax as required by section three.

Section *seven*, after providing that if the tax is not paid as required in section three it shall be sold, goes on in one of its clauses to provide substantially:

"That in all cases where the owner of land shall not, on or before the day of sale, appear in person before the tax commissioners and pay the amount of the tax, with interest and cost of advertising, and request the land be struck off for a less sum than two thirds of its assessed value, the tax commissioners shall be authorized at the tax sale to bid off the land for the United States at a sum not exceeding two thirds of its assessed value unless some person shall bid a larger sum, in which case the land shall be struck off to the highest bidder."

In another clause of the same section *seven* it is provided, substantially,

"That at the tax sale, any tract of land which may be selected under the direction of the President for government use, for war, military, naval, revenue, charitable, educational, or police purposes, may be bid in by the tax commissioners for, and struck off to, the United States."

These having been the provisions of the law in force at the time of the tax sales under consideration, it is obvious that all sales at which private persons became purchasers must have been made under the first quoted clause of section *seven*; and, the price bid for Arlington ($26,200) having been more than two thirds of its assessed value, ($22,733,) and it having been struck off to the United States at such price, it is equally obvious that the sale of Arlington was made under the second quoted clause of the section *seven*, and could not have been made under the clause first quoted.

Upon this state of the law, the Supreme Court of the United States, in the case of Bennett vs. Hunter, 9 Wallace, 326, in which Bennett had purchased land under the first clause of section *seven* above quoted, decided, that a tender of the tax by an agent of the owner, to the tax commissioners, before the tax sale, was equivalent to a payment, so as to destroy their authority to sell and to render their sale invalid; and it so held, notwithstanding the language of the first above quoted clause of section *seven* providing that sale might be made in all cases in which the owner had not, before the sale, appeared *in person* before the tax commissioners, and paid the tax. The court expressly remarked in its decision, that it "did not perceive in the terms of the act any limitation of the right of paying the tax, to the owner in his proper person."

In ascertaining who was authorized to pay the tax, which it expressly said was the only question in the case, the court seemed to feel bound to confine its view to section *three* as the part of the act which determined the rights of the owner of land in regard to paying the tax; —a section which did not expressly require the owner to pay in person. The court in determining *this* question, refused to consider the terms used in section *seven*, the object of which section was, not to determine the rights and duties of the owner of taxed land, but the powers and duties of the tax commissioners after the owner had failed to pay the tax. It was not necessary for the court in this case to look beyond and above the terms of the statute, in determining the rights of the owner of taxed land; but I think it was evidently in its mind that there was no power in Congress to impose conditions much less disabilities upon the owner of land subjected to taxation, as to the manner of paying the tax at any time before the divestiture of his title by a tax sale made after delinquency and forfeiture. It distinguished the indefeasible right of the owner to pay the tax by an agent before sale, from the right of *redeeming* the land after forfeiture and sale; intimating that Congress might properly limit the right of redemption to the owner in person, while it could not constitutionally prohibit payment of the tax by an agent before the sale. I say that it was not necessary for the court to resort to this higher ground in deciding Bennett vs. Hunter, but from the tenor and spirit of its language, I am persuaded that the proposition was in its mind that Congress had no power to restrict the owner of land, in paying the tax, to payment in his own proper person.

In the case of Tacey vs. Irwin, 18 Wallace 549, the tax sale of the land had been made to a private purchaser under the first quoted clause of section seven. In that case no tender of the tax had been made by Irwin's agent.—The language of the record on this point in the court's finding of the facts is:

"Whilst the said premises, however, were advertised for sale, his [Irwin's] brother in law went to the office of the commissioners to *see after the payment of the tax* on the property, *but made no formal offer or tender of payment*, because such offer or tender was, in effect, waived by said commissioners, they declining to recognize any tender unless made by the owner in proper person."

This case differed from that of Bennett vs. Hunter, in the fact that there was no tender of the tax to the tax commissioners by the friend or agent of the owner. The owner's brother in law merely went to see after the payment of the tax, but made no formal offer or tender of it, that being virtually waived by the commissioners in declining to recognize any tender unless made by the owner in proper person. Judging from the language of the Court the decision in that case, as I read it, was based, not merely on the presumption that an offer would have been made but for the refusal to recognize a tender by an agent in that particular instance, but was based also on the fact that it was the rule and practice of the commissioners so to refuse. I think a careful and unbiased reading of the decision in Tacey vs. Irwin leads to the inevitable conviction that it was based chiefly on the existence of that rule and practice, and but partially, if at all, on such declarations of the commissioners on the occasion when Irwin's brother in law called "to see about paying the tax," as deterred him from making a formal tender. But I think the higher principle on which both of the decisions under review were made was, that the language quoted in section *seven*, implying a requirement that the owner should pay the tax in person, was overridden by the superior principle of constitutional law, that Congress had no right in levying a tax for purposes of revenue, to impose disabilities or denounce penalties for political conduct, thereby converting revenue laws into instruments for indirectly confiscating that entire estate in land which the constitution forbids Congress from confiscating by direct laws.

But whatever view might have been in the mind of the Court, Bennett vs. Hunter, and Tacey vs. Irwin, were cases involving lands which were sold under that provision of section *seven*, which expressly gave authority to sell in all cases where the owners had not appeared in person before the commissioners and paid the tax. The Court decided that sales thus expressly authorized were nevertheless void when the owners had through friends or agents tendered payment of the tax; and that the law would presume that owners were ready to make offer of payment by friends or agents if such offer had not been rendered nugatory in advance by a rule and practice of the commissioners to receive the tax only from owners in person. If, therefore, sales expressly authorized by the language of section *seven* were void, then for a stronger reason was the sale of Arlington void, which could not, as I conceive, have been made under this clause of section *seven*, apparently containing such express authority, but was made under another clause of that section which authorized sales to the United States of such lands as the President should direct to be purchased for military, educational or kindred purposes, without reference to whether or not the owner had offered to pay the tax by a friend or agent. If the principle on which the Supreme Court decided the sales of Hunter's and Irwin's lands to be void, was so strong as to override express language authorizing them, found in the law, it certainly may be followed in the present case, where the land was sold under a provision which in terms gave no authority to sell lands of persons who had not appeared in person to pay the tax.

I cannot agree with defendants' counsel in the opinion that the two clauses in section *seven*, one of them authorizing sales to both government and private persons, but restricting the government to bids not exceeding two thirds the assessed value of the lands; and the other clause directing the sale of lands to the United States without restriction of price when the President ordered their purchase for certain purposes, as both governing in such sales as that of Arlington. I think the clauses are distinct and several, each of them authorizing sales which could not have been made under the other. The sale of Arlington could not have been made under the prior clause of section *seven*, because it was not made to a private person, nor made to the United States at a price less than two thirds of its assessed value. How, therefore, could both clauses have governed in this sale? The language of the prior clause imposing disabilities as to the payment of the tax by restricting the right to owners in person, is for that reason to be construed strictly; is to be given as limited an application as possible; and is not unnecessarily to be extended to other clauses of section *seven*.

But even if this rule of construction did not govern, I do not think that the language of the clause authorizing the sale of the lands of all owners who had not appeared in person and paid their taxes, could, by any logical construction, be extended to the other clauses of section *seven*. This clause is an independent provision, not found in the original law, not necessary to the sense of any other part of the law either in its original or present form, not connected grammatically or in logical course of thought with the context, but interjected into a place in the section no better suited to its admission than any other place; and having every characteristic of a piece of patch work. I do not think it has any control over the other clause standing at a distance from it in section *seven*, under which Arlington was sold; and I do not think that the theory of defendant's counsel that the two clauses apply inseparably to all sales is tenable.

I do not think I ought to pass unnoticed the distinction which defendant's counsel drew in their argument for their instruction No. 1 between a tax sale made to a private purchaser, such as was passed upon by the Supreme Court in the two cases which have been under consideration; and a sale made to the United States, no instance of which has been considered by the Supreme Court in connection with the question whether or not an owner could pay his tax by an agent and not in person. They lease this distinction upon the pretension that, although under the decisions of the Supreme Court in the two cases referred to, a tender or offer of the tax made before the tax sale by a friend or agent of the owner is valid against the purchaser if the land be afterwards purchased by a private person;—yet, if the purchaser turn out to be the United States, that fact, under the language of the first quoted clause of section *seven*, will retroactively render the tender or offer of the tax by a friend or agent, which was valid and sufficient before the sale, void afterwards as against the United States. I have already expressed the opinion that the language in the clause of section *seven* referred to, does not apply to a sale to the Government made under direction of the President, as this sale of Arlington was. But even if the case were otherwise, I do not see how such a distinction as counsel have taken can be maintained.

The decisions in Bennett vs. Hunter and Tacey vs. Irwin were intended to define the rights of owners of lands assessed with taxes, during the period anterior to the tax sales. The first decision distinguished between the rights of a land owner before the tax sale, and his rights after the sale. It held that, as the object of the law under review was to raise taxes and not to inflict penalties for political conduct, it must be construed with reference to and in aid of that object. It held that an owner of taxed land had a right to pay the taxes due, through a friend or agent before sale; and the Chief Justice, I repeat, discriminated between this right of *paying taxes* by an agent, and the absence of the right to *redeem lands* after their sale for taxes, except in person. Those decisions establish the right of any owner of land, taxable under the laws of Congress imposing direct taxes, to pay the tax by a friend or agent, at any time before the tax sale.

If the owner had this right to tender or offer payment of a tax through a friend or agent at any time before a sale, and the right was denied him, then it is difficult to see how a subsequent sale to a particular purchaser could, by *ex post facto* and penal operation, annul that right. A law which makes such discrimination would seem to be unconstitutional, not only in giving to an act performed by Government officials under it, an *ex post facto* and penal effect; but also in depriving a person of his vested right in property by a process other than "due process of law" as that phrase is used by the constitution. The impolicy of such a provision of law is as obvious to me as its unconstitutionality. Its evil would be liable to fall not only upon disloyal but upon the most loyal citizens. A severe illness, lasting only ninety or a hundred days, would subject the owner of land to the irreclaimable loss of its possession and of all but two thirds of its value;—for the period of advertisement added to the sixty days allowed by the act for redemption, would require an illness of less than a hundred days to divest a citizen of his estate.

We can imagine, too, a case of even grosser injustice, which might happen by accident, though my respect for the Government forbids me to think it could be morally possible by design. It might happen by accident that Government, desiring a piece of land belonging to a loyal citizen engaged in its military service, might in time of war order his command to a distant and protracted service, rendering it impossible for him "to appear in person before the tax commissioners and pay the amount of his tax," and thereby bring on a sale of it for taxes, at which sale it would itself have the power to obtain the land irreclaimably. The familiar expedient employed by King David towards Uriah would here be repeated by accident. I doubt the constitutionality of any provision of a law for raising revenues which would subject to forfeiture lands upon which the taxes, when tendered in behalf of the owner, would by its own terms be prohibited from being received. A law passed for raising taxes, if containing provisions inflicting, without trial, disabilities and penalties for political conduct, in defeat of revenues, would be construed by any court liberally in aid of the provisions for raising revenues, and very narrowly as to the provisions inflicting penalties in defeat of revenues. I think I may construe the decisions of the Supreme Court, in the two cases which have been cited, as going to the extent of holding that the owner of land assessed for taxes under the laws of 1862-63 might pay them, or tender or offer to pay them, through an agent, at any time before the tax sale, as against all purchasers, whether private individuals or the United States. I therefore feel bound to refuse the instruction No. 1, prayed for by defendants' counsel.

On the other hand, on the authority of the decisions of the Supreme Court in Bennett vs. Hunter, and Tacey vs. Irwin, rendered upon the proceedings of the same tax commissioners as sold Arlington, and the validity of whose certificate of sale is now impeached on the same grounds as were relied upon in those cases, I feel not only authorized, but bound, to give the two instructions asked for by the plaintiff.

They are in these words:

INSTRUCTIONS FOR THE PLAINTIFF.

1. If the jury believe from the evidence that Philip R. Fendall, for and on behalf of the owner of the property in controversy, prior to the sale thereof of the tax commissioners, on the 11th day of January, 1864, offered to pay the amount chargeable on said property, under the act of Congress entitled "An act for the collection of direct taxes in insurrectionary districts within the United State, and for other purposes," approved June 7th, 1862, and the acts amendatory thereof; and that said offer was refused by said commissioners because it was not made by the owner in person, then said sale was unauthorized, and conferred no title upon the purchaser.

2. If the jury believe, from the evidence, that the commissioners, prior to January 11th, 1864, established, announced, and uniformly followed a general rule, under which they refused to receive, on property which had been advertised for sale, from any one but the owner or a party in interest, *in person*, when offered, the amount chargeable upon said property, by reason of said acts of Congress, then said rule dispensed with the necessity of a tender, and, in absence of proof to the contrary, the law presumes that said amount would have been paid, and the Court instructs the jury that, upon such a state of facts, the sale of the property in controversy, made on the said 11th day of January, 1864, was unauthorized, and conferred no title upon the purchaser.

The opinion was very attentively listened to by the bar and spectators.

At its conclusion Judge Robertson read a statement from the Treasury Department showing the amount of taxes, &c., due on the Arlington estate amounting to $207.17. He said that counsel on both sides had agreed to submit the statement to the Court and abide by its decision as to what amount should be paid. The statement contained various items of taxes, interest, penalties and costs, some of which the plaintiff did not think should be charged in this case. He read the law on the subject of tax sales.

The Court decided that the interest at ten per cent. should be charged up to the day of sale and six per cent. thereafter.

Judge Willoughby reserved an exception to the ruling of the Court on the instructions as read and the charge given.

Judge Robertson said this was not a charge to the jury.

Judge Willoughby said the jury heard the instructions read.

The Court said it was merely an assigning of reasons for his decision and not a charge.

Judge Robertson said the counsel should have had the jury sent out, if he objected to their hearing the reasons.

Judge Willoughby desired to except to the portions read, as to the plaintiff's instructions.

The Court—You will have to get a mandamus to compel me to sign such an exception.

It was agreed that instructions Nos. 6 and 7 of the defendants be granted. They refer to the certificate as being evidence of the regularity of sale and to be interfered with only by evidence.

The Court suggested that two instructions of the defendants were identical, and that others might be consolidated so as to simplify them.

Judge Willoughby read his instruction No. 8, which holds that the practice of the commissioners after the sale of the Arlington estate, did not effect this case.

There was no objection and this instruction was granted.

Also No. 18, as to the practice of commissioners after the sale, not being sufficient evidence in this case.

No 9 instruction was rejected and an exception taken.

No. 10—That the rule of commissioners could not affect this case unless by reason of that rule tender was not made.

Judge Robertson thought this interfered with their second instruction and shifted the burden of proof.

Judge Willoughby urged that the jury should be left to determine the question of evidence and the instruction came within the cases of Bennett vs. Hunter and Tacey vs. Irvin.

Judge Robertson again urged his objections.

District Attorney Lewis said they only wanted the jury to decide by the evidence on the rule and not leave the question as one of law, to the Court.

Major Page claimed that the instruction conflicted with their second one and would confuse the jury.

Judge Willoughby altered the instruction in accordance with Judge Robertson's idea and it was admitted, without objection.

No. 11. That the burden of proof as to the general rule of the Commissioners, is upon the plaintiff, and that two instances, where only one Commissioners was present, did not constitute a rule, was granted without objection.

No. 12 was withdrawn.

No. 13 was granted. It relates to proof of taxes being due.

Judge Robertson said that before entering a non suit he would call the attention of the Court to some matters. The answers of the defendants were filed jointly, and they (the plaintiffs) had had no notice of any desire to have separate verdicts. Under this impression they had not examined some of the witnesses as critically as they might have done. He asked that the paper he held, the petition for certiorari, if not already in evidence, should be put in. They proposed then to enter non suit as to the other parties, and take separate verdicts as to Kauffman and Strong.

Judge Willoughby asked which paper the counsel wanted, as there were two.

Judge Robertson said he thought he had the right paper, but wanted both if they were different. He was surprised that objection was made.

District Attorney Lewis said the paper was simply a petition not sworn to, and was in fact functus officio, and not proper to go before the jury.

Judge Robertson was surprised, yesterday, when Judge Willoughby told him the paper was not in evidence, and all he wanted now was to have the Court to allow it to be put in. The original petition was amended by this second paper.

Mr. Lewis objected to re-opening the case, and said the evidence would all be re opened.

Judge Robertson would offer the paper in evidence and let the defendants explain it away afterwards if they could.

The Court finally decided to allow the paper to be read, and it was read to the jury by Judge Robertson. The paper shows the amount of land held by each of the defendants, Kauffman and Strong.

The non suit was then entered as to all parties save Kauffman and Strong, and the 11th, 15th, and 16th and 17th instructions of the defendants were withdrawn.

The defendant's counsel excepted to the order allowing non suits.

Judge Willoughby then asked that the Court order the suit to be discontinued as to Kauffman and Strong.

The motion was denied by the Court, and exceptions noted by defendants.

Judge Willoughby then moved to exclude the evidence as to the practice of the commissioners, which motion was denied by the Court and excepted to.

Instruction No. 19 was then taken up. It is in regard to the peaceable possession of the property by the defendants and required proof of adverse possession by plaintiff. It was refused.

Judge Willoughby offered another instruction relating to the authorization by General Lee, of any person to offer or pay the tax for him.

The Court suggested that, in accordance with the case of Bennett and Hunter the instruction should require a disavowal of the act of the agent.

Judge Willoughby suggested that they might convince the jury, that General Lee would have disapproved the action, whereas it would be impossible to prove an absolute disavowal.

The Court suggested that General Lee had only a life estate, and it was doubtful if he could object to the payment.

Judge Willoughby modified the instruction so as to require belief that the owners would have disavowed the payment.

The instruction was refused.

Judge Willoughby offered an instruction that if the jury found that other parties besides Strong and Kauffman were in occupancy, then a verdict could not be given against those two, but a general verdict for the plaintiffs.

A long discussion ensued between counsel, after which the instruction was refused.

Judge Willoughby then offered another instruction requiring the jury to bring in a special verdict as to each of the defendants unless they occupied jointly.

This was agreed to.

Judge Willoughby also offered an instruction as to the defendants' occupancy by authority of the United States which was refused.

Also one requiring the concurrence of a majority of the commissioners to establish a general rule and in the absence of proof of such concurrence, the law presumed that the majority did not concur. This was assented to and granted.

The court then adjourned until to-morrow morning at 11 o'clock.

The instructions are now all in and the case ready for the argument before the jury, which will commence to-morrow.

LETTER FROM RICHMOND.

[Correspondence of the Alexandria Gazette.]

RICHMOND, January 27, 1879.—Railroad is the main topic of conversation and discussion in and out of the Legislature now. Speaker Allen concluded his speech this morning, and was followed by Mr. Mushback in opposition to the bill. Mr. Allen said, in his remarks, that he knew of one town whose delegates were opposed to the scheme, where the cows were actually grazing in the streets. Mr. Mushback, in beginning his speech, said he presumed the city of Alexandria was the town Mr. Allen alluded to, and in reply he said if cows were grazing in the streets of Alexandria this very fact was owing to the railroad policy of the State. As Speaker Allen did not deny, it is presumed he meant Alexandria.

Mr. Mushback's speech was highly spoken of on all sides. He contended that the James River and Kanawha Canal was to be given away, as proposed in this bill. As to the idea that the directors of the Richmond and Alleghany road were actuated solely in their wish to have this bill passed by a desiere to have the good will of the people, he contended that their aim was to make money by the transaction. He did not think the canal was so worthless as the advocates of the bill had made out. He said if the canal was to be sold it should be advertised, and efforts made to get foreign capitalists to bid for it. It would be an injustice to Mr. Mushback, in the brief space alloted to this correspondence to attempt to enumerate even the points of his speech. Mr. Henry, of Richmond, is expected to reply to him to-morrow.

Mr. W. C. Mayo was to-day elected Secretary of the Board of Public Works, to fill the vacancy occasioned by the death of Mr. J. H. Eustace. There were sixteen applicants for the place.

General White, of Hanover, after having "gone for" Mr. Hunter, to-day went for Mr. Hanger, of Augusta, who manifested some opposition to his game bill. He told Mr. Hanger that when the people began to bring Mr. Hanger forward for Governor of the State he would get along very well until he reached Hanover and Caroline, and when the people of those counties found out his real position on the game law they would never give him a vote. This sally of the ex-Speaker brought down the House.

The many friends of Miss Kate Baldwin, one of our most charming and admired young ladies, and grand-daughter of W. N. McVeigh, Esq., of Alexandria, will be pleased to learn of her recovery, after an alarming illness of diphtheria.

From present indications it would seem that the Richmond and Alleghany Railroad bill will occupy the House during the rest of the week.

The rage for glass-ball shooting has reached Richmond. To-morrow Mr. W. T. Michell will undertake, on a wager, to break one hundred glass balls without missing. STRONGBOW.

NARROW ESCAPE.—On Friday night, January 17th, Miss Maggie Smith, youngest daughter of Mr. Temple Smith, of Manassas, had a narrow escape from drowning. It appears that the young lady had occasion to go out upon a porch under which there was a cistern, the cover to which had inadvertently been left off. Not waiting for a light in the hands of her sister, and unaware of the cistern being uncovered, she walked deliberately into it, and went down into the cold water with all the gracefulness and sang froid of an accomplished pearl diver. The alarm of her sister, however, brought her father and Mr. J. Fred. Tasnell to the rescue, who promptly hastened to withdraw her from her involuntary bath. The water was nearly over her head. The young lady exhibited considerable nerve, and did not seem, either while in the cistern or after being extricated, to have been very badly frightened by her dangerous situation. We are glad to chronicle that she has suffered no inconvenience from her immersion, and think that this will be her last experiment in that line.—*Manassas Gazette.*
